

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SHANE K. HOPKINS,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 05-870-SLR
)	
JOHN PUSEY, JOSEPH SMITH,)	
DAVID PIERCE, LISE MERSON,)	
JUDITH MULLEN, DREWRY FENNELL,)	
M. JANE BRADY)	
)	
Defendants.)	

ANSWER AS TO DEFENDANTS JOHN PUSEY AND JOSEPH SMITH

COME NOW, the defendants, John Pusey and Joseph Smith, by and through their undersigned counsel, and answer Plaintiff's complaint as follows:

1. Denied.
2. Denied.

Parties:

3. Admitted that Shane Hopkins is an inmate at the Delaware Correctional Center in Smyrna, Delaware.
4. Admitted that John Pusey is employed by the Delaware Department of Correction ("DOC"), as a correctional officer, denied as to the remainder of the allegations contained in the paragraph.
5. Admitted that Joseph Smith is employed by the Delaware Department of Correction ("DOC"), as a correctional officer, denied as to the remainder of the allegations contained in the paragraph.
6. Admitted that Lise Merson is employed by the Delaware Department of Correction

(“DOC”), in the grievance office, denied as to the remainder of the allegations contained in the paragraph.

7. Admitted that David Pierce is employed by the Delaware Department of Correction (“DOC”), as the deputy warden, denied as to the remainder of the allegations contained in the paragraph.

8. The Defendants are without sufficient knowledge to admit or deny the allegations contained in the paragraph.

9. Admitted that the Honorable M. Jane Brady was the Attorney General of the state of Delaware at the time of the alleged incident, denied as to the remainder of the allegations contained in the paragraph.

Factual Allegations:

10. Denied. The paragraph contains a legal conclusion which requires no response, to the extent a response is required, the paragraph is denied.

11. Denied. The paragraph contains a legal conclusion which requires no response, to the extent a response is required, the paragraph is denied.

12. The allegations in this paragraph are not directed to John Pusey or Joseph Smith. Further, the Defendants are without sufficient knowledge to admit or deny the allegations contained in the paragraph.

13. The allegations in this paragraph are not directed to John Pusey or Joseph Smith. The paragraph contains a legal conclusion which requires no response, to the extent a response is required, the paragraph is denied.

Civil Assault:

14. See Defendants’ answers to paragraphs four and five.

15. Admitted that Shane Hopkins has filed suit against Defendants alleging assault.

16. Denied. The paragraph contains a legal conclusion which requires no response, to the extent a response is required, the paragraph is denied.

17. Denied. The paragraph contains a legal conclusion which requires no response, to the extent a response is required, the paragraph is denied.

18. Denied. The paragraph contains a legal conclusion which requires no response, to the extent a response is required, the paragraph is denied.

Physical Intentional [sic] Infliction of Emotional Distress:

19. See Defendants' answers to paragraphs four and five.

20. Admitted that Shane Hopkins has filed suit against Defendants alleging intentional infliction of physical emotional [sic] distress.

21. Denied. The paragraph contains a legal conclusion which requires no response, to the extent a response is required, the paragraph is denied.

Count I:

22. Denied. The paragraph contains a legal conclusion which requires no response, to the extent a response is required, the paragraph is denied.

Count II:

23. Denied. The paragraph contains a legal conclusion which requires no response, to the extent a response is required, the paragraph is denied.

Count III:

24. Denied. The paragraph contains a legal conclusion which requires no response, to the extent a response is required, the paragraph is denied.

Count IV:

25. Denied. The paragraph contains a legal conclusion which requires no response, to the extent a response is required, the paragraph is denied.

Count V:

26. Denied. The paragraph contains a legal conclusion which requires no response, to the extent a response is required, the paragraph is denied.

Count VI:

27. Denied. The paragraph contains a legal conclusion which requires no response, to the extent a response is required, the paragraph is denied.

Count VII:

28. Denied. The paragraph contains a legal conclusion which requires no response, to the extent a response is required, the paragraph is denied.

Count VIII:

29. Denied. The paragraph contains a legal conclusion which requires no response, to the extent a response is required, the paragraph is denied.

Count IX:

30. The allegations in this count are not directed to John Pusey or Joseph Smith. The paragraph contains a legal conclusion which requires no response, to the extent a response is required, the paragraph is denied.

Count X:

31. The allegations in this count are not directed to John Pusey or Joseph Smith. The paragraph contains a legal conclusion which requires no response, to the extent a response is required, the paragraph is denied.

Count XI:

32. The allegations in this count are not directed to John Pusey or Joseph Smith. Further, the Defendants are without sufficient knowledge to admit or deny the allegations contained in the paragraph.

RELIEF

Denied that Plaintiff is entitled to any relief.

DEFENSES AND AFFIRMATIVE DEFENSES

1. The defendants are immune from liability to the Plaintiff under the doctrine of Sovereign Immunity.
2. The defendants are entitled to Qualified Immunity.
3. The defendants are immune from liability to the Plaintiff under the doctrine of State Sovereign Immunity.
4. Plaintiff fails to state a claim on which relief may be granted.
5. Plaintiff's alleged injuries, if any, resulted from an intervening and superseding cause; to wit, Plaintiff's disorderly, violent and criminal conduct.
6. Plaintiff's disorderly, violent and criminal conduct contributed to any alleged injury that resulted from the alleged incident in a manner which precludes recovery.
7. Plaintiff has failed to mitigate any alleged injuries.
8. The defendants, in their official capacities, are immune from liability under the Eleventh Amendment of the United States Constitution.
9. The Plaintiff failed to exhaust available administrative remedies in a manner which precludes any recovery.
10. Lack of subject matter jurisdiction.
11. Lack of personal jurisdiction.

12. As to any claims under state law, the Defendants are entitled to immunity under the State Tort Claims Act, 10 Del. C. § 4001 *et seq.*
13. The Plaintiff' s claims are barred by his comparative negligence.
14. The Plaintiff' s claims are barred by his contributory negligence
15. As to any claims under State law, the Defendants are entitled to sovereign immunity in their official capacities.
16. Any other appropriate defense or affirmative defense as may be uncovered through the discovery process.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Lisa Barchi

Lisa Barchi # 3927

Deputy Attorney General

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Date: May 26, 2006

Attorney for Defendants Pusey and Smith

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2006, I electronically filed *Defendants Pusey and Smith's Answer to Complaint* with the Clerk of Court using CM/ECF. I hereby certify that on May 26, 2006, I have mailed by United States Postal Service, the document to the following non-registered participants:

Shane Hopkins
SBI # 253918
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

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